

UNITED STATES FEDERAL COMMUNICATIONS COMMISSION

In Re Applications of:) MM DOCKET No.: 00-156
)
RONALD BRASHER,)
)
Licensee of Private Land)
Mobile Stations)
WPLQ202, KCG967, WPLD495,)
WPK1739, WPK1733, WPK1707,)
WIL990, WPLQ475, WPLY658,)
WPKY903, WPKY901, WPLZ533,)
WPKI762 and WPDV262, Dallas/)
Fort Worth, Texas, et al)

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Fort Worth, Texas, et al)

Room TW-A-363
FCC
445 12th Street, SW
Washington, D.C. 20554

Monday,
March 5, 2001

The parties met, pursuant to the notice of the
Judge at 9:00 a.m.

BEFORE: HONORABLE ARTHUR R. STEINBERG
Administrative Law Judge

APPEARANCES:

On behalf of Ronald Brasher, Patricia Brasher,
Estate of O.C. Brasher, Metroplex Two Way Radio,
DLB:

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1127

I N D E X

VOIR

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>DIRE</u>
Carolyn Sue Lutz	1132	1227 1284	1289	1303	
Melissa Sumpter Ellington	1310	1351	1420	1425	

E X H I B I T S

	<u>IDENTIFIED</u>	<u>RECEIVED</u>	<u>REJECTED</u>
<u>Ronald Brasher/Patricia Brasher:</u>			
5	1246	1250	
6	1247	1251	
7	1270	1271	

P R O C E E D I N G S

9:00 a.m.

THE COURT: We're on the record.

There's a little bit of housekeeping that's left over from last Friday and that was that Mr. Brasher's attorney was supposed to get copies of Exhibit RB/PB-4 to the Reporter.

MR. ROMNEY: We've got the copies made, Your Honor. We've already distributed them around, given the original to the Court Reporter, and you have a copy of it.

THE COURT: Oh, okay. So Mr. Reporter, you've gotten your copies?

THE REPORTER: Yes.

THE COURT: And you never moved its admission.

MR. ROMNEY: I request that Exhibit RB/PB-4 for identification be admitted, Your Honor.

MS. LANCASTER: Your Honor, I haven't seen it, so I don't remember it from the other day and I don't have a copy in front of me, so I don't know what it is.

THE COURT: Okay. Do you want to take a look at it, and then you can tell me later.

MS. LANCASTER: Okay.

MR. KNOWLES-KELLETT: Here's an extra copy Judy.

MS. LANCASTER: Okay.

THE COURT: Let me just note for the record, I

1 guess the Reporter has the original.

2 THE REPORTER: That's correct, Your Honor.

3 THE COURT: So -- Well, I'd just like to say that
4 the copy's basically three and four on the original one
5 page. It was like a 14 inch page. So I'd just like to note
6 for the record that the copies, pages 3 and 4 of the copies
7 on the original are one page.

8 So if we refer to these in findings we'll use the
9 numbers I guess of the copies so that everybody, page one,
10 two, three, four, so everybody knows what we're talking
11 about.

12 Is that okay with everybody?

13 MR. ROMNEY: It's fine with us, Your Honor.

14 THE COURT: Okay. Any other preliminary matters?

15 MS. LANCASTER: Yes, sir. I'm ready to respond.

16 THE COURT: Okay.

17 MS. LANCASTER: Your Honor, I believe Ms. Hill
18 stated that she does not remember ever receiving this and so
19 we would object to it, that there's been no foundation for
20 it coming in at this point.

21 I would also like to note that in Exhibit 19 there
22 appears to be a portion of the form letter part of this at
23 the top, but there's nothing in Exhibit 19, the last page,
24 page four is not in Exhibit 19. The only thing that's in
25 Exhibit 19 is page three, which doesn't say it pertains to

1 anyone in particular. So there's not been any testimony
2 within which you would get this in.

3 We would object to it on that basis.

4 MR. ROMNEY: Your Honor, I disagree. I believe
5 Ms. Hill stated that she did receive letters around that
6 time, and she did not deny that she received this letter.
7 So I believe that it -- I think the objection may go to the
8 weight to be given to the document, but not to its
9 admissibility.

10 THE COURT: Is Mr. Ron Brasher going to retake the
11 stand at the end of this?

12 MR. ROMNEY: He could, yes. If he needs to.

13 THE COURT: I think I know what his testimony
14 would be with respect to this document, and maybe if he gets
15 put up on the stand, do you want to ask him questions about
16 this? If you choose not to do so then I can rule on -- I
17 guess we can put off the admission of this until that
18 happens. It's solely within your discretion as to what you
19 want to do about it.

20 I think I know what the testimony's going to be.
21 But I've been surprised before.

22 MR. ROMNEY: Okay.

23 THE COURT: Are you ready, Ms. Lancaster?

24 MS. LANCASTER: Yes.

25 THE COURT: Can I swear in the witness, please?

1 Whereupon,

2 CAROLYN SUE LUTZ

3 having been first duly sworn, was called as a witness herein
4 and was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MS. LANCASTER:

7 Q Good morning.

8 A Good morning.

9 Q For the record, would you state your full name?

10 A Carolyn Sue Lutz.

11 Q What's your home address, Ms. Lutz?

12 A That's 2508 Valley Forge, Richardson, Texas 75080.

13 Q Are you employed?

14 A No, I'm not.

15 Q Were you previously employed?

16 A Yes, I was.

17 Q Where did you work?

18 A I worked for Metroplex Two Way Radio.

19 Q When did you go to work for Metroplex Two Way
20 Radio?

21 A I originally went to work for Metroplex Radio in
22 1986. I left, and then came back in 1996.

23 Q When did you leave the first time?

24 A I left in May of 1995.

25 Q And when did you leave the second time?

1 A September 27, 2000.

2 Q Why did you leave DLB the first time you left?

3 A I left to get a better job.

4 Q Why did you leave DLB the second time you left?

5 A Because basically of this investigation and I felt
6 like that it was just not possible for me to continue to
7 work there under the conditions that were present.

8 Q What conditions were those?

9 A I was being asked to give depositions, and I knew
10 that things that I would answer questions might be answered
11 differently by someone else, and I just didn't feel like I
12 could continue to work there.

13 Q When you worked at DLB did you have a job title?

14 A Yes, I did. I had a job title of office manager.

15 Q Was that through both periods, the 1986 through
16 1995, and the '96 through 2000?

17 A No. The first time that I worked for them I was
18 secretary/receptionist. The second time I worked for them
19 it was office manager.

20 Q Okay.

21 Were your duties different the first time and the
22 second time?

23 A No, they were basically the same duties.

24 Q Why did you go back to work for DLB?

25 A The company that I had gone to work for after

1 leaving them, Metroplex Two Way the first time, were moving
2 their offices to another city. It was too far for me to
3 drive. I had chosen not to go with them.

4 Pat Brasher called me and asked me would I
5 consider coming back to work for her at Metroplex Two Way
6 when she found out that I wasn't going to go with the other
7 company to the other city.

8 Q As I understand what your testimony was, you left
9 for a better job, and then after you took that job you found
10 out the company was relocating?

11 A That is correct.

12 Q So because you didn't want to travel the extra
13 distance is why when Ms. Brasher called you decided you'd go
14 back to work for DLB? Does that accurately summarize your
15 testimony?

16 A Yes, it seems to.

17 THE COURT: Let me just say, when we refer to DLB
18 here, I think we're all referring to DLB/Metroplex
19 interchangeably, so in your answer you said Metroplex Two
20 Way and Ms. Lancaster said DLB, but for what's going on
21 here, I think they both mean the same thing.

22 Is that everybody's understanding?

23 MS. LANCASTER: Yes, sir.

24 THE COURT: Okay. Counsel for each party is
25 nodding affirmatively.

1 Is that okay with you?

2 THE WITNESS: Yes, that's fine. So it's okay if I
3 refer to it as Metroplex Two Way?

4 THE COURT: You refer to it whichever way you feel
5 most comfortable doing.

6 THE WITNESS: Okay. Metroplex Two Way is what it
7 is to me.

8 THE COURT: Okay.

9 BY MS. LANCASTER:

10 Q When you answered the phones, what did you answer?

11 A Metroplex Two Way Radio.

12 Q Okay.

13 What were your duties at Metroplex or DLB during
14 your second term of employment?

15 A My duties were basically still
16 secretary/receptionist. I waited on the customers that came
17 through the door, I answered the phones, I did the invoicing
18 for service work performed, I did the billing for the
19 monthly repeater services, I handled customer service, I
20 handled all of the monthly reports that were made after the
21 monthly statements went out that were sent to the
22 accountant. Any function that had to do with invoicing or
23 billing or receivables, I took care of. I also did
24 secretarial work for the management staff. I did
25 secretarial work for the sales staff. And I have done

1 secretarial work for the service manager as well, when he
2 required it.

3 Q Did you have check writing capabilities?

4 A Not per se, no, I did not. I was not a person who
5 was supposed to sign checks.

6 Q Did you ever sign checks?

7 A Yes, I did sign checks, but not with my own name.

8 Q Explain the circumstances under which you would
9 sign a check and whose name you would sign it with.

10 A Any time there was no one at the office to sign
11 checks, which would either have to be Diane Brasher or
12 Patricia Brasher, if a check was needing to be written and
13 neither of those persons were available, then they would
14 come to me to have a check written.

15 I would make a phone call to Pat or Diane, whoever
16 was available, to find out whether or not I had permission
17 to write a check. They would say yes, you can write a
18 check, make it out of so and so bank account, and sign Pat's
19 name to it.

20 Q Did you ever put anything on the check that would
21 indicate that it was written by you?

22 A Usually on the stub of the check or sometimes on
23 the photocopy of a check that I would take after I had
24 written a check, I would write on it some explanation as to
25 what the check was for or what it was, to indicate what it

1 was for, yes.

2 Q When you wrote -- By Pat, you mean Pat Brasher?

3 A Yes, Patricia Brasher.

4 Q When you wrote her name, were you trying
5 necessarily to duplicate her signature?

6 A Not necessarily to duplicate her signature, no.
7 It just -- I didn't really try to imitate it. It just kind
8 of sort of resembled it. We sort of wrote the same, it
9 seems like.

10 Q You are sisters with Pat, aren't you?

11 A Yes, I am Pat's sister.

12 THE COURT: Are you also a sister to Norma
13 Sumpter?

14 THE WITNESS: Yes, that's correct.

15 BY MS. LANCASTER:

16 Q And the sister of Thomas Lewis?

17 A Yes, that's correct.

18 Q You stated that you answered the phones. Do you
19 recall answering the phone at any time wherein Norma told
20 you to tell Ron to turn off a station that was licensed in
21 her name?

22 A I have no memory of ever, a phone call of that
23 nature, no.

24 Q Would it be unusual for Norma to call Ron
25 directly?

1 A She would not necessarily call Ron directly except
2 to make the phone call for Jim Sumpter. She would place the
3 call for Jim and hold on the phone until Ron got there, then
4 give a phone call to Jim. But as far as specifically
5 wanting to talk to Ronald, not ever that I can really
6 recall.

7 Q When you stated that you did the invoicing and the
8 billing for the repeater services and you did the
9 receivables, did you ever see any accounting records or
10 ledgers which would show you the receivables that came into
11 DLB by station? By either frequency or by call sign?

12 A No, there would not have been any reports
13 generated of that nature by my computer.

14 The repeater billings were broken down by the
15 frequency range that they represented, but there were
16 multiple repeaters within these frequency ranges that they
17 represented and it was just a compilation of all of the
18 frequencies that were within that range.

19 In other words we had a 450 repeater system, we
20 had an 800 repeater system, we had a 900 repeater system --
21 excuse me. We didn't have an 800 repeater system. We had a
22 450 repeater system, a T-band repeater system, and a 900
23 repeater system. But there were no specific reports broken
24 down by station that I generated from my computer.

25 Q Did you ever see any?

1 A Not that I ever saw, no.

2 Q How about, would that have to do with the billing
3 that you're making that statement? You wouldn't know what
4 the bills were for any particular -- That would go with any
5 particular station?

6 A Bills as far as --

7 Q I believe you stated you did the billing for the
8 repeater.

9 A That's where I billed the customers for the
10 repeater service that they paid for.

11 Q Did you know which customers, which were assigned
12 to which repeater?

13 A Not specifically, no. I knew when they were
14 assigned to a T-band system or 900 system or just a regular
15 straight 450 system. But as far as an individual repeater,
16 no.

17 Q How about the receivables? You got the checks in,
18 is that correct?

19 A Yeah. We would get the mail on a daily basis and
20 I would look through the mail and anything that looked like
21 a check, I would take that out and open it. That's what I
22 would make my bank deposits from. Either myself or the
23 assistant.

24 Q Did you keep any kind of ledger as to the monies
25 that came in?

1 A Yes, there was a ledger that we created at the end
2 of each month that showed what invoices were open that
3 needed to be paid, and when we received money those were
4 marked in the ledger and then entered on the computer.

5 Q When you got a check in for Customer ABC, for
6 example, did you have any way of knowing which station
7 Customer ABC was assigned to?

8 A Only as far as whether it was a T-band station or
9 a 450 station or a 900 station.

10 Q But not within the T-band system, you wouldn't
11 know specifically which station this customer was on?

12 A No. I had no way of knowing that. No.

13 Q When you returned in 1996, what were Ron's duties
14 at that time?

15 A I guess you would call him what I would refer to
16 as the general manager. He basically oversaw or
17 participated in everything that went on there. He paid most
18 attention to the sales department and to the service
19 department, but he also was aware of what the office
20 personnel were doing also.

21 Q Would everyone that worked there consider him the
22 boss?

23 A Yes, absolutely.

24 MR. ROMNEY: Objection. Calls for speculation on
25 the part of the witness, Your Honor.

1 THE COURT: Well, why don't you limit it to in her
2 own mind was he the boss.

3 BY MS. LANCASTER:

4 Q In your mind he was the boss?

5 A Absolutely, yes.

6 Q How many employees were there at the time?

7 A Somewhere in the neighborhood of 12 to 15, I
8 believe, in 1996 when I came back to work there.

9 Q Were there discussions among employees about who
10 was the boss in the business?

11 A As far as discussions among us, not really
12 discussions. I mean we all thought of Ron Brasher as the
13 boss.

14 MR. ROMNEY: Objection, Your Honor. Calls for
15 hearsay on the part of the witness. Also non-responsive to
16 the question that was asked.

17 THE COURT: Sustained.

18 BY MS. LANCASTER:

19 Q Did you overhear Mr. Brasher give orders to other
20 employees?

21 A Yes.

22 Q Did those employees abide by his orders?

23 A Yes, they did.

24 Q Did Mr. Brasher at some point retire?

25 A Yes, he did. I believe it was November of 1998 we

1 had a retirement party for Mr. Brasher, yes.

2 Q And did his duties change after he retired?

3 A Not as far as I could see. I mean he still came
4 to the office every day and he still gave orders to people
5 and people would still do what he asked them to do.

6 Q I believe you stated you left on September 27th of
7 2000, is that correct?

8 A Yes, that's right.

9 Q On September 27th of 2000, how often was Mr.
10 Ronald Brasher coming into the office?

11 A Ron Brasher was in the office almost absolutely
12 daily for the period of time that I can recall during that
13 time. He might have missed once a week to take his wife to
14 the doctor to get some shots, or he would take half a day
15 off to go do that. But most every day I saw Ron Brasher at
16 the office.

17 Q You stated he might take a half a day off. The
18 days that he came in, did he normally work a full day?

19 A Yes, he did. As far as what you would consider a
20 full day, he came in at 6:30 in the morning and he might go
21 home at 1:30 in the afternoon. Or 3:30 in the afternoon, it
22 depended. But anywhere from 1:30 to 3:30 in the afternoon
23 is when he would usually leave, and sometimes later.

24 Q Did he run errands after he left work?

25 A Yes, he did. Usually he would come to the front

1 desk when he was leaving and tell me I'm going to so and so
2 and so and so and then I'll be home.

3 Q As far as you could tell, had his duties changed
4 after he retired versus before he retired?

5 A Not appreciably that I could see, no.

6 Q How about Patricia Brasher? During your second --
7 When I talk about your second term of employment I'm talking
8 about when you went back in 1996 up until the time that you
9 left in September of 2000. So rather than repeat those
10 dates each time I'll just refer to it as your second term of
11 employment.

12 A Okay.

13 Q During your second term of employment what were
14 the duties of Pat Brasher?

15 A Patricia Brasher was still the President of
16 Metroplex Two Way Radio. She basically did not come to the
17 office a whole lot. She was basically semi-retired, as I
18 refer to it as semi-retired. She stayed home mostly. She
19 still was the President. And any time she came into the
20 office if she gave an instruction to anyone, they would have
21 done it.

22 Q Did she have any duties that she handled on any
23 type of a regular basis?

24 A Not specifically, no.

25 Q How about during your first term of employment,

1 what was her function then?

2 A During my first period of time she was at the
3 office most of the time, in the early days especially, and
4 she would virtually do almost everything too. She would
5 supervise personnel, she would supervise service personnel.
6 She didn't have a lot of contact necessarily with the sales
7 personnel. She kind of left that part of it to Ronald for
8 the most part, but she did direct service personnel and
9 direct office personnel. She could do payables, she would
10 take care of insurance matters, especially office work type
11 things.

12 Q So in 1995, for example, I believe you stated you
13 worked the first time you left in 1995, she was actively
14 involved in the management of the business?

15 A Certainly more actively involved in 1995 than when
16 I returned in 1996. Even then she had health problems that
17 kind of kept her away more than it had been way back in the
18 early '80s, the mid '80s and the early '90s.

19 Q At the end of 1995 or when you were last there in
20 1995, was she doing, was she writing the checks?

21 A It was -- Wait a minute. Ask the question again
22 as far as timeframe.

23 Q When you left in 1995.

24 A No. No. Most of the accounts payable work was
25 being done by Diane Brasher. She was capable of writing

1 checks but she just didn't do it that much.

2 Q You were doing the accounts receivable.

3 A Yes, I was doing accounts receivable.

4 Q And you resumed doing accounts receivable when you
5 came back in '96.

6 A Yes, that's correct.

7 Q Up through the time that you left.

8 A Yes.

9 Q When did David Brasher come to work for DLB?

10 A David Brasher came to work for DLB, Metroplex Two
11 Way, in the summer of 1997.

12 Q Why did he come to work at that time?

13 A I believe that he had been fired from his previous
14 employment and had come to work to Metroplex Two Way to take
15 his father's place once his father retired.

16 Q Do you know why he was fired from his previous
17 employment?

18 MR. ROMNEY: Objection, Your Honor. Irrelevant,
19 immaterial to this proceeding.

20 MS. LANCASTER: It may be or may not be, Your
21 Honor. It depends on the response.

22 THE COURT: I'll let her respond and then I'll
23 see.

24 THE WITNESS: David Brasher left his employment
25 with his other company I believe because of a sexual

1 harassment suit brought against him by a female employee
2 that worked under him.

3 MR. ROMNEY: Objection, Your Honor. That's pure
4 speculation.

5 THE COURT: Why don't you see what the basis of
6 the knowledge is, and then we'll see if it's speculation.

7 BY MS. LANCASTER:

8 Q How do you know that Ms. Lutz?

9 A I was told that by --

10 MR. ROMNEY: Objection, Your Honor. Hearsay.

11 THE COURT: Let's see where it goes.

12 THE WITNESS: I was told that by several people
13 including Diane Brasher.

14 MS. LANCASTER: She's the party, Your Honor.

15 MR. ROMNEY: Same objection.

16 THE COURT: Well, I'll receive it but I don't know
17 how much weight I'm going to give to it.

18 If you want to ask Diane, if you want to re-ask
19 David. You had an opportunity to ask David, too, and you
20 didn't do it.

21 MS. LANCASTER: I didn't know about it, Your
22 Honor.

23 THE COURT: Well, you still didn't do it.

24 BY MS. LANCASTER:

25 Q Ms. Lutz, when David joined in 1997, what were his

1 duties?

2 A He began to train to take over the duties of
3 Ronald Brasher. He supervised personnel, he supervised
4 sales department, service personnel, and he of course
5 supervised office personnel as well.

6 Q When you left in September of 2000 had his duties
7 changed?

8 A He had taken over more of the ordering of service
9 personnel around et cetera and so forth, and as long as his
10 father didn't object to any of the orders he gave, they went
11 through. But Mr. Brasher, Mr. Ron Brasher still, if he
12 didn't like what Ronald [sic] asked people to do, he would
13 go back and change it.

14 Q I believe you said if he didn't like what Ronald
15 would ask people to do --

16 A Excuse me.

17 MR. ROMNEY: Objection. Move to strike, Your
18 Honor. Non-responsive, anything about Ron Brasher.

19 THE COURT: Okay. I didn't follow the objection.

20 MR. ROMNEY: She asked what David started -- The
21 question was what duties did David take over. Then she goes
22 on and starts adding stuff about what Ron did, if it was
23 contrary to what David did. That has nothing to do with the
24 question that was asked of her. That's non-responsive.

25 THE COURT: Okay. I'll sustain that and then you

1 can just ask the next question.

2 BY MS. LANCASTER:

3 Q When David gave an order to any of the personnel
4 at DLB was it necessarily followed?

5 A Not always, no.

6 Q Why wouldn't it be followed?

7 A If Ronald objected to what David had asked
8 personnel to do, then Ronald would go back to that personnel
9 and tell them don't do that, don't do it the way David said
10 do it, do it the way I say do it.

11 Q Which way would they do it?

12 A If Ronald was the last one that gave them the
13 order, they did it Ronald's way.

14 Q Was that regularly done?

15 A Quite often, yes.

16 Q What were Diane's duties when you first joined in
17 1986? Your first term of employment.

18 A She was basically I think the
19 secretary/receptionist at that time. I was hired to take
20 her place when she had a baby.

21 Q She was married to David at that time, wasn't she?

22 A Yes, she was.

23 Q Did she leave the office? Is that why you were
24 hired to replace her?

25 A That's right. She left to go and have a baby, and

1 she was going to stay at home for awhile after she'd had the
2 baby, and then I believe she was supposed to come back part
3 time.

4 Q Were you there when she came back?

5 A Yes, I was.

6 Q Do you recall when that was?

7 A Probably -- She left in February of 1986 to have
8 the baby. She probably took off approximately a year. say
9 February of '87 she probably came back on a part time basis.
10 On a regular part time basis at that time.

11 Q Did she do any work from her home during that
12 year?

13 A I don't know for sure. She may have done some
14 work from home yes. I think maybe she might have calculated
15 payroll and such of that nature, and, as a matter of fact
16 she did do the payroll, even at that time. I don't know if
17 she calculated it at home, but I believe she came into the
18 office to actually produce the checks, the payroll checks.

19 Q Who was doing the accounts payable at that time?

20 A I believe Patricia was doing it at that time.

21 Q So Patricia took that duty back over in Diane's
22 absence?

23 A I believe Patricia had actually done the payables
24 before that. Diane was basically the
25 secretary/receptionist. Now she may have written payables

1 checks at that time, prior to my coming, but I don't know
2 that because I wasn't there. I think she was capable of it.
3 I mean she had check-writing privileges.

4 Q When you say she, who are you referring to?

5 A Diane had check-writing privileges. She may have
6 paid some bills. But when I came there she was virtually
7 leaving, because I started in January of '86. She left in
8 February of '86. So she was only there a month after I came
9 to work there.

10 Q And you stated I believe she came back in February
11 of '87?

12 A Approximately that time.

13 Q What were her duties when she returned?

14 A She still did payroll, she assisted me in the
15 front desk areas. She assisted me in the billing work. She
16 also assisted Pat in many of the duties in the payables
17 area, et cetera and so forth.

18 Q If Diane gave an order around DLB would people
19 follow her instructions?

20 A Yes. Anyone Diane gave an order to they would
21 have done it, yes.

22 Q What type of business did DLB do while you were
23 employed there? What was the nature of their business?

24 A We were a two way radio sales, service and
25 installation company and we provided repeater service for